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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,796	01/13/2004	Jon C. Taenzer	035372-003	5451

7590 01/03/2007  
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EXAMINER

NI, SUHAN

ART UNIT PAPER NUMBER

2615

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/757,796

Applicant(s)

TAENZER ET AL.

Examiner

Suhan Ni

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 14-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Election/Restriction***

1. This communication is responsive to the provisional election made without traverse on 09/26/2006 to prosecute the invention of Group I, claims 1-13 and 24-26. Group II, claims 14-23 are withdrawn from further consideration, as being drawn to a non-elected invention. A complete reply to a future final office action must include cancellation of non-elected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

***Drawings***

1. The drawings are objected to because there are two sets of "Figs. 1-2" filed (please see on **PAIR**). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application.

2. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1-2, 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Nassimi (U. S. Pat. - 7,079,664).

Regarding claim 1, Nassimi discloses an earpiece (Fig. 4) for sound delivery comprising: a housing (8, 10); a speaker located in said housing (20); and a rotatable cap (24) for providing sound communication from the speaker to the ear canal of a user as claimed.

Regarding claim 2, Nassimi further discloses the earpiece, wherein said rotatable cap comprises a body (24) rotatably coupled to said housing, a bud (34) extending from the body, and port means (26) for providing sound communication from the speaker to the end of the bud.

Regarding claims 6-8, Nassimi further discloses the earpiece, wherein the bud has a substantially frusto-conical shape (Fig. 5) and said port means comprises one port (Fig. 2) as claimed.

3. Claims 1 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by French (U. S. Pat. - 2,545,731).

Regarding claim 1, French discloses an earpiece (Fig. 3) for sound delivery comprising: a housing (1); a speaker located in said housing; and a rotatable cap (3) for providing sound communication from the speaker to the ear canal of a user as claimed.

Regarding claim 10, French further discloses the earpiece, wherein the speaker is oriented with an angle between 45 degrees and 135 degrees to a side of user's head, an output side of the speaker facing to front of the head of the user.

Regarding claim 11, French further discloses the earpiece, wherein an axis of the speaker is oriented substantially perpendicularly to an axis of the ear canal of a user (Figs. 3 and 7).

Regarding claim 12, French discloses an earpiece, wherein an angle of the axis of the bud to the axis of the speaker is between 15 degrees and 90 degrees (Figs. 3 and 7).

4. Claims 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Topholm (U. S. Pat. - 4,585,089).

Regarding claim 24, Topholm discloses an earset sound delivery device comprising: support means (10) to support a speaker in the concha of a user's ear; and, a cap (27) rotatably coupled to said support means and providing sound communication from the speaker to the entrance of a user's ear, wherein said rotatable cap is rotatable to various angles to accommodate anatomical differences among users.

Regarding claims 25-26, Topholm further discloses the device, wherein said rotatable cap is rotatable about the axis of the speaker ((Fig. 3) and said cap is constructed to form an acoustic seal with said speaker.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-5, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nassimi (U. S. Pat. - 7,079,664).

Regarding claims 3-5, Nassimi does not clearly teach for the un-occlusive ear bud as claimed. Since providing an un-occlusive ear bud for an earpiece is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable un-occlusive ear bud, such as with venting means for the earpiece as an alternate choice, in order to provide more comfort to the user, and to reduce certain noises as well.

Regarding claim 9, Nassimi does not clearly teach for a mushroom shaped tip as claimed. Since providing a mushroom shaped tip for an earpiece is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable mushroom shaped tip, such as with cerumen trap means for the ear bud of the earpiece as an alternate choice, in order to provide more comfort to the user, and further to effectively operate the earpiece.

Regarding claim 13, Nassimi does not clearly teach for the silicon material as claimed. Since providing silicon material for a cap of an earpiece is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to be motivated to provide a suitable silicon material, especially the tip portion of the cap of the earpiece as an alternate choice, in order to provide more comfort to the user.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (571)-272-7505, and the number for fax machine is (571)-273-7505. The examiner can normally be reached on Tuesday and Thursday from 10:00 am to 8:00 pm, and may be reached on Monday, Wednesday and Friday from 10:00 am to 8:00 pm. If it is necessary, the examiner's supervisor, **Sinh N. Tran**, can be reached at (571)-272-7564.

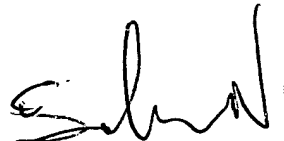
7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (571)-272-2600, or please see <http://www.uspto.gov/web/info/2600>.

Thursday, December 07, 2006



**SUHAN NI**  
**PRIMARY EXAMINER**